

MARYLAND GAZETTE.

T H U R S D A Y, M A Y 2, 1805.

Maryland Gazette.

ANNAPOLIS, THURSDAY, May 2, 1805.

From the American Daily Advertiser.

LAW REPORT.

Circuit Court of the United States, sitting at Philadelphia, April 20, 1805.

IN THE CASE OF

DON JOSEF CABRERA & REMIREZ.

THIS was an application by Don Josef Cabrera and Remirez for a discharge under the Habeas Corpus act. The circumstances of this very extraordinary case are as follow:—In August last a check for 300 dollars, drawn in the name of the Marquis d'Yrujo, his majesty the king of Spain's ambassador near the United States, was presented by a black man at the Bank of Pennsylvania, and appeared on inspection to be a forgery. The man, on interrogation, said he had brought the check, by the order of a gentleman, to whom he conducted a messenger from the bank. The gentleman proved to be Mr. Cabrera; two checks, one for 1000 dollars, and the other for 600 dollars, had been presented previously to this development, and as they were palpably forgeries, their amount had been refused by the bank to the Spanish minister. The attention of the bank had of course been called to this subject, with a view to detect the person guilty of the fraud. Don Cabrera totally denied the accusation, and said he had received the checks from a Frenchman, who, as it has since appeared, was not in America at the time. The bank addressed a letter to the governor, apprising him of the circumstances as they had occurred. The governor had applied to the Spanish minister, and he requested of the governor a warrant to confine Mr. Cabrera in the debtor's apartment of the prison, till he should learn the pleasure of the king his master respecting him. Soon after Mr. Cabrera wrote to the minister, protesting his innocence and offering to waive his privilege, in order that he might obtain a speedy trial before the state court. Upon the communication of this request of Don Cabrera's by the minister to the governor, regular process was issued against the prisoner by the attorney-general, a bill presented and found by the grand jury for forgery, and bail demanded in 2000 dollars. Don Cabrera not being able to procure this bail, was obliged to remain under confinement. He then desired that he might be sent home, to be tried by the laws of his own country; in pursuance of which the minister applied to the governor, and he directed the attorney-general to enter a *nolle prosequi* on the bill found against him. Don Cabrera applied to the secretary of state for the interference of the government of the United States; but it does not appear that any steps were taken to promote his discharge. Under these circumstances an application was made to the circuit court for Don Cabrera's enlargement; the application was made by Mr. S. Levy, supported by Mr. Heatley.

The attorney-general (M'Kean) stated that the court had no jurisdiction, and that the affair was entirely between Mr. Cabrera and the Spanish government, for whose orders the minister must wait.

Mr. Ingersoll on behalf of the bank, stated, that they were to be considered as having no interest whatever in the application, either for or against.

Mr. S. Levy went into an argument of great length, to shew that the prisoner was entitled to the benefit of the Habeas Corpus act, and that this court had power and jurisdiction to dispense that benefit. He read a paper purporting to be a letter of advice from the secretary for foreign affairs of the kingdom of Spain, Don Pedro Cevallos, to Don Josef Cabrera and Remirez, the directions of which were that he should come to the United States, with a salary of 12000 rials (about 1000 dollars) and an outfit in the like sum, in order that he might inform himself in the customs, politics and laws of this country, and forward testimonials of his acquaintance with these matters—and also directing him to assist at the office of secretary of legation, to which he was to be attached. Mr. Levy likewise read a commission giving him the grade of captain* in the provincial militia of Spain, and declaring his appointment to be as attached to the office of secretary of legation in the United States, together with a passport which recognized his character as secretary—a certificate from the Spanish minister was read, in which Don Cabrera was styled gentleman ambassador adjunct to the secretary of legation, and said to be entitled to the benefit of the laws of nations.

The district attorney (Dallas) read a letter he had received on this subject from the secretary of state, which stated that Don Cabrera had been received in an official capacity by our government—and Mr. Dallas further said, that the secretaryship of legation had been an office since Mr. Yrujo's coming to this country, and filled by two persons.

With these proofs of his official situation, independent of the minister of his nation, the prisoner's counsel contended that he was committed without authority and in violation of the laws of nations, and that this court had jurisdiction and would liberate him. Many authorities were adduced to shew the high and indefeasible privileges of the public representatives of one foreign state to another. On the other hand the 14th section of the United States judiciary bill was referred to: it is in these words—"Provided that writs of Habeas Corpus shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify;" within neither of which cases, it was said, did Mr. Cabrera come, he being confined at the instance of the minister of his country, to await the sentence of his own government.

The court said, it was a case of considerable consequence, they would hold it under advisement till Monday.

MONDAY, April 22. Don Cabrera being brought to the bar, the judges proceeded to deliver their opinions.

His honour judge Peters took an extensive and accurate view of the subject, in the course of which he observed, that though the power of congress to legislate on it was undoubted, they had never exercised that power; that the sections of the laws relied on for the application did not comprehend the case; that no provision had been made for the present case; that the circuit court only have jurisdiction if process had been issued out of that court; that this case could not be brought within the purview of the 14th section of the judiciary bill, which on the contrary was exclusive of it—and that his opinion was, the prisoner could obtain no redress in this court.

His honour judge Washington, observed, that there was no occasion to examine into the authority by which Don Cabrera was in confinement, till the jurisdiction of this court to relieve him should be ascertained—that the documents produced shewed the prisoner to be in commission from his nation, and subject to the laws of nations—that the natural tribunal for such an application as the present was that wherein process was depending, which could not be urged as the case here; that the 13th section of the judiciary bill was not applicable, but that the 14th was, for it took the prisoner out of the circuit court's power; that however he might be of opinion that congress should have occupied the whole ground allowed them by the constitution, it was not his sentiment that it was the part of an American judge to enlarge his jurisdiction, his powers being limited; and he concluded that the prisoner must be remanded.

Don Cabrera having obtained permission to speak to the court, a person who appeared to be an interpreter, read a paper nearly to the following effect:

When the king, my master, conferred on me the commissions I have the honour to hold, he exempted me from every jurisdiction whatever but his own. If the governor of this state, violating the most sacred privileges, has taken on himself to imprison me, there must be some power somewhere to protect me. Where shall I find it?—Shall I pass from court to court, suffering affronts and insults? The nations of Europe will hear with astonishment that the public minister of a crowned head has been eight months in imprisonment in republican America. I declare, then, that I proclaim myself FREE, and that if violence be exercised against me, I shall defend my privileges at the expense of my life.

Here the reading was interrupted by judge Peters, who said that he could not sit and hear the peace threatened, and that if the prisoner had any thing to say which his counsel approved of, he would hear it.—As, however judge Washington said he had no objection to hearing him, judge Peters consented to his going on. The interpreter then read—

I shall prove in this manner, I am worthy the character with which the king, my Master, has honoured me.

The Prisoner was remanded.

The court of appeals, says the Richmond Inquirer, lately decided, that no inhabitant of the British dominions, who was born before the American revolution, can inherit real property in this country, accruing since the revolution.

Boston, April 19.

FROM LISBON—March 13.

Yesterday arrived ship Victory, capt. Signal, in 34 days from Lisbon.—There were no preparations for war on the part of the Portuguese, and it was presumed they would do every thing which circumstances would permit to avoid a rupture with the British. There was no intelligence of the sailing of any men of war from the Spanish ports, nor of any attack on Gibraltar. Cadiz remained in a state of blockade. A report was current that the Brest fleet, crowded with troops, had got to sea.—The Prince of Wales Packet from England for Lisbon, had been taken by a French cruiser. A convoy had arrived at Lisbon from London and performing quarantine—their passage was said to be about eleven days.

Flour at Lisbon, 16 dollars—corn 117 cents—slaves per M. 100 dollars.

April 23.

We hear from Middleborough, that the wife of the rev. DAVID GIRNEY, being in the 48th year of her age, was delivered of her first child (a daughter) on the 12th ult.—after living in a married state more than seventeen years.

NEW-YORK, April 23.

Yesterday morning the frigate John Adams dropped down to the watering place, with 400 men on board, where we understand, she hourly expects orders to proceed for the Mediterranean. The gun-boats lately built here, and some others, are probably to accompany her.—With this reinforcement our Squadron will be enabled, we hope, to make a vigorous attack on the Tripolitan power, and before the ensuing summer passes away, reduce the haughty foe to terms honourable to a gallant navy, and a free people.

April 24.

Besides the gun boats lately constructed in our ports, we understand four bomb brigs are building, each to carry two 15 inch mortars, to be ready by the 1st of June, to proceed to the Mediterranean. For a complete charge of one of these mortars 30 pounds of powder is necessary—and it is understood they can throw shells into the enemy's fortifications from such a distance as renders them safe from his fire.

The gun boats which are about to sail will row 30 sweeps, and besides carrying two 32 pounders, are also to carry each four 6 inch howitzers, and 30 blunderbusses. No. 6 and 7, built in this port, have received sailing orders, and No. 3, built in Philadelphia, has orders to join them, and sail in company.

We are informed that the ship Galen has arrived at Boston, from London, and that she spoke admiral Cochrane's fleet, consisting of six sail of the line and some frigates, in pursuit of the French Squadron.

April 25.

In this day's Gazette we present our readers with a few extracts from Paris papers to the 4th ult.

We learn by a gentleman who came out in the Ambition, that his Imperial Majesty, is extremely unpopular in France.—His conduct is deprecated in the severest terms, by every well informed gentleman in that country.

Markets were good—all kinds of West-India produce was high and in demand.

We learn by one of the passengers in the Ambition, that Mons. Chape, the famous Inventor and Director of the Telegraphs in France, shot himself a few days before they sailed. He left a letter directed to his family connexions, informing them, that the only reason for this act of suicide, was because he was tired of living!

PARIS, March 1.

The Toulon fleet put to sea on the 15th January, with ten thousand troops on board, commanded by general Lauriston; but meeting with strong easterly winds, were compelled to return into port again, after having been out four days. A ship of the line and three frigates had separated from the Squadron. La Cornelié, which had put into Genoa, and the ship of the line, which had put into Ajaccio, are already returned to Toulon. The two frigates, L'Hortense and L'Incorruptible, have been still more fortunate—they have fallen in with an English convoy of 40 sail, escorted by two large sloops of war, which, in order to protect the convoy, kept back to engage the two French frigates, which had been in pursuit of them the whole day of February 2d; and it was not until the 3d at day break that the engagement began.

The Incorruptible engaged within pistol shot the largest of the sloops of war and the Hortense the other. In about an hour and a quarter the first struck her colours, and was taken possession of; but she made so much water that captain Billiet was obliged to take out the crew, amounting to 150 men, and wounded to the number of 30; the prize sunk shortly after. She had 23 men killed in the action; was a ship of a particular construction, very advantageous for sailing; mounted 32 carronades of 32 pounders. The Incorruptible had one man killed and five

* Don Cabrera appeared at the bar in a full suit of regiments, sword, &c.